IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10535 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJESH ALIAS RAJU PUNJABI DHARAMVIR KAPUR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10535 of 2003

MR AR SHAIKH for Petitioner No. 1

MR RM CHAUHAN ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 02/09/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed against him by the Police Commissioner, Surat city, on

19.3.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985, (hereinafter referred to as "the PASA Act" for short). The petitioner is declared as "dangerous person" under the PASA Act.

The grounds served upon the petitioner and placed on record of the petition reveal that in passing the impugned order, the detaining authority took into consideration two aspects, firstly, the registration of crimes against the petitioner, in all five, on various dates under sec. 379, 457, 380 of the IPC for the theft of four wheeler cars and gold ornaments. The last offence out of five, came to be registered on 27.1.2003. Secondly, the detaining authority also took into consideration the statements of two informants witnesses recorded by the proposing authority on 12.2.2003 and verified by the detaining authority on 16.3.2003. The identities of the witnesses is kept concealed as per sec. 9(2) of the PASA Act, who narrated the incidents unreported to the police of dated 14.1.2003 and 23.1.2003. From the above material available with the detaining authority, the order impugned was passed by it.

Ld. advocate Ms. Datta for Mr. AR Shaikh ld. advocate for the petitioner and Ld. AGP Mr. RM Chauhan for the respondents were heard at length.

From amongst other various contentions raised on behalf of the petitioner and controverted by the ld. AGP on behalf of the respondents. From the rival contentions, it appears that the petition can be disposed of on sole ground of delay in passing of the order impugned in this petition and other contentions are not required to be dealt with. The facts of this case are squarely covered by the decision of this court in the mater of Elesh Nandubhai Patel v. Commissioner of Police, Ahmedabad city as reported in 1997(1)GLH p. 381 and the decision of the Apex court in the matter of Pradeep N. Paturkar v. S. Rammurthi, as reported in AIR 1994 SC 656. The last offence came to be registered against the petitioner on 27.1.2003 and the order came to be passed on 19.3.2003. This delay remains unexplained though the witnesses' identities is not disclosed, narrated the incident of 14.1.2003 and 23.1.2003, however, their statements could be recorded by the proposing authority on 12.2.2003 only. This delay is also unexplained. When the delay is caused in passing of the order of detention, the order of detention cannot be sustained under Article 226 of the Constitution of India. Therefore, the order passed by the detaining authority

and impugned in this petition is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 19.3.2003 by the Police Commissioner, Surat City, under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose.

(J.R. VORA, J.)

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